IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. PRAKASH RAO

WRIT PETITION NO : 16869 of 2004

Between:

G. Josephine W/o Madan Mohan Rao
R/o Balasamudram, Hanumakonda, Warangal

..... PETITIONER

AND

1 The Commissioner & Director of School Education, A.P. Saifabad, Hyderabad.
2 Regional Joint Director of School Education, Warangal.
3 District Educational Officer, Warangal District, Warangal.
4 Assisi High School, Assis Nagar, Mill Colony, Warangal, rep. by Correspondent Sister Dineja R/o Assisi Nagar, Mill Colony, Warangal.
5 Sister Dineja, Correspondent, Assisi High School, Mill Colony, Warangal.
6 Sister Lilly Daniel, Headmistress, Assisi High School, Mill Colony, Warangal and Superior St. Gerosa Convent, Warangal

7 Principal Secretary, School Education, Government of A.P., Secretariat Buildings, Hyderabad.

(R.7 is impleaded as per Court order dt.04.02.2005 in W.P.M.P.No.849 of 2005)

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly in the nature of Writ of Mandamus declaring the action of the respondent No.1 in giving consent for the transfer to the petitioner to Khammam District as unconstitutional and consequently direct the respondents to post the petitioner at Government Aided School or Government School after setting a side the transfer orders passed against the petitioner are *mala*

fid.

Counsel for the Petitioner: MR.K.S.MURTHY

Counsel for the Respondent Nos.1 to 3 & 7: GP FOR SCHOOL EDUCATION

Counsel for the Respondent Nos.4, 5 & 6: Sri B. NALINI KUMAR.

The Court made the following :

ORDER:

Heard Sri K.S.Murthy, the learned counsel appearing for the petitioner, the learned Government Pleader for School Education appearing for the respondents 1 to 3 and 7 and Sri B.Nalini Kumar, the learned counsel appearing for the respondents, 4, 5 and 6.

The petitioner herein, who has been working as Secondary Grade Teacher with the fourth respondent, filed this writ petition, *inter alia,* seeking for a writ of Mandamus challenging the impugned action of the respondents in transferring her to Khammam District as bad, illegal and arbitrary.

The case of the petitioner, in brief, is that subsequent to acquiring qualifications i.e., M.A., B.Ed., while she was a nun, she was appointed as a Secondary Grade Teacher in aided post on 17.12.1994. Since the said congregation was part of the St.Gerosa Convent, Warangal under Sister of Charity Secunderabad Province, she was being paid salary after deducting mess and maintenance charges. However, she intimated her intention to the Management to leave the congregation. She made an application on 21.01.2004 to the Management seeking for leave to settle family affairs. Later, she got married to one Sri Madan Mohan Rao a native of Hanumakonda after renouncing nun-hood. The said marriage took place on 31.01.2004. However, the leave application was rejected on 25.03.2004 and also seeking reimbursement of the amounts. Therefore, the petitioner had made a

representation on 14.06.2004 whereupon the authorities made inspection on 15.06.2004. Since the petitioner got married to a Hindu which was not liking to the Management, then the respondents started harassing her. Therefore, the petitioner had to file complaint to the local Police. There is ample evidence to show that the petitioner attended the School under due signature as attested by other co-teachers as witnesses. The petitioner has been making various representations and pointing out her ill health as she was hospitalized on 30.07.2004 and she also sought for maternity leave with effect from the said date. A pre-matured baby was born on the same day and died on 01.08.2004. The petitioner had to suffer a lot due to extensive bleeding. In spite of all these, the petitioner has been receiving totally ill treatment. The petitioner's case has become a larger issue drawing the public attention and there have been various protests on various quarters locally. It is now evident that though the Management is receiving the amounts, the petitioner is not being paid salary nor allowed to report to duty. On 17.04.2004, a letter was given by the Management finding fault with her for marrying a Hindu and therefore, it is impossible to continue her in service and she will not be entertained in the school. The said letter was issued by the sixth respondent, which is a superior St. Gerosa Convent, Warangal. The petitioner submitted a representation on 18.04.2004 and has been approaching various authorities about the ill-treatment given to her due to marrying a Hindu. Thereupon, a notice has been published on 06.09.2004 by the Management to the effect that the petitioner was transferred to Khammam to an Institution, which is affiliated to the present Management. It was submitted that the transfer was to a post, which is not aided. Further, it is submitted that the transfer is a sort of punishment because of marrying a Hindu as evident from the letter dated 17.04.2004. In spite of the petitioner's persuasion, representations and also the protests from various other quarters including the local public, no action has been taken by the Management. Hence, the writ petition.

At the time of admission, this Court granted interim direction in W.P.M.P.No.22054 of 2004 suspending the transfer of the petitioner. Subsequently, on appearance, the respondents-Management filed a counter affidavit justifying the transfer on administrative grounds and pointing out various chequered events. Further, it is pointed out that the alleged letters as pointed out by the petitioner on 17.04.2004 etc., were not issued by the Management and apparently the petitioner made use of some letters which have been kept already for the said purpose and therefore, there is no question of any blame on the respondents. Since the petitioner is transferred to

Khammam, she can make no complaint.

During the course of arguments, the counsel on either side and the learned Government Pleader have pointed out that the Director of School Education, Andhra Pradesh, Hyderabad passed the orders in Proceedings R.C.No.2186/D3-3/04-1, dated 06.01.2005 acting on the representation filed by the petitioner, rejected her request of transfer to any other School in the aided post on the ground that such request at the instance of an individual is not feasible.

Considering the rival submissions made on either side and on perusal of the material, the only question which requires to be considered in this case is as to whether the impugned action on the part of the respondents in transferring her to Khammam ?

There is no dispute to the fact that the petitioner was appointed as SG Teacher initially at a time when she was a nun. Later, she got married to a Hindu and ultimately sought a maternity leave and a pre-matured baby was delivered on 30.01.2004 and the said child died and she was suffering ill-health. On behalf of the petitioner, reliance was sought to be placed on the letter issued by the sixth respondent dated 17.04.2004 and also reiterating fact that the action on the part of the petitioner in marrying a Hindu is against the very congregation. It is also pointed out by the petitioner that it is only because of such act on her part, she is being made a victim. It is further pointed out on behalf of the petitioner that it is not the case of the Management that all the other staff namely the Teachers are only from their community but they include from various other communities as well and therefore, there cannot be any such approach on the part of the Management in trying to find fault with the petitioner in marrying a Hindu and ultimately transferred to such a far of place of Khammam which is highly impossible for a Teacher especially she being a lady to go all the way and discharge duties. Ultimately, even a request made by the petitioner for transferring her to any other School also stood rejected by the Director of School Education on 06.01.2005 on the ground that it is not feasible.

On a totality of circumstances and in stead of going into the correctness or otherwise nature of the impugned action on the part of the respondents more so it is being a Minority Institution, it would suffice in the interest of justice, as rightly suggested from all quarters to make transfer of the petitioner to any other School along with the aided post. Though, it cannot be said that the action on the part of the respondents in effecting the transfer to far of place at Khammam can be justified on any circumstances because of she getting married to a Hindu but however, unhindered by any such reprehensive approach from any side and to avoid any apprehensions from all quarters. It is felt desirable that the authorities including the respondents 1 to 3 and 7 shall take into consideration the pragmatic approach would be more apt to transfer her to any other nearby School along with the aided post. The Management shall accede to such request and make necessary proposals whereupon the authorities namely the respondents 1 to 3 as well as the Government which has been added as the seventh respondent herein shall pass appropriate orders in this regard for transferring the petitioner along with the aided post to any other convenient place exigency required. The respondents shall also give a fair hearing before taking any decision and also taking into consideration any aspects as pointed out by her.

The writ petition is accordingly disposed of. Consequently, the impugned orders are set aside and the petitioner's entitlement for salary shall also be taken into consideration while passing orders. The entire exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order. No costs.

B. PRAKASH RAO, J

21st March 2005.

Chvn.

Note:

C.C. in one week.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER.

To

1 The Commissioner & Director of School Education, A.P. Saifabad, Hyderabad.
2 Regional Joint Director of School Education, Warangal.
3 District Educational Officer, Warangal District, Warangal.
4 Assisi High School, Assis Nagar, Mill Colony, Warangal, rep. by Correspondent Sister Dineja R/o Assisi Nagar, Mill Colony, Warangal.
5 Principal Secretary, School Education, Government of A.P., Secretariat Buildings, Hyderabad.

6 Two C.Cs. to the G.P. for School Education, High Court Buildings, Hyderabad (OUT).

7. Two C.D. copies.